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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

) WT DOCKET NO. 94-147
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)

JAMES A. KAY, JR.

Licensee of one hundred fifty two Part 90
Licenses in the Los Angeles, California, Area

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To: The Commission

**WIRELESS TELECOMMUNICATIONS BUREAU'S
OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION**

1. On May 24, 1996, James A. Kay, Jr. ("Kay") filed a Petition for Partial Reconsideration ("Petition") of the Commission's Order, FCC 96-200 (released May 8, 1996). The Wireless Telecommunications Bureau hereby opposes Kay's request for relief.

2. In its Order, the Commission modified the Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture, 10 FCC Rcd 2062 (1994) ("HDO"), in this proceeding by deleting 12 licenses from contention. The Commission took this action after the matter was certified to it by the Presiding Judge. See James A. Kay, Jr., 96M-35 (released March 15, 1996). Also in its Order, the Commission dismissed as unauthorized a March 29, 1996, Statement in which Kay sought reconsideration of the entire HDO. It is the Commission's action dismissing the March 29, 1996, Statement of which Kay now seeks reconsideration.

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3. Kay argues that his March 29, 1996, Statement did not constitute a petition for reconsideration of the HDO. Rather, Kay suggests that he was seeking to have the Commission "review the entire HDO, not just the portions of the HDO selected by the Bureau." Petition, at p. 4. Kay's attempt to characterize his March 29, 1996, Statement as something other than an unauthorized petition for reconsideration of the HDO is meritless. Regardless of the label he attaches to it, the plain fact is Kay sought to have the Commission reexamine its action designating this case for hearing. Such a request, by any name, title, or label is governed by § 1.106(a) of the Commission's Rules which precludes the filing of a petition for reconsideration of a hearing designation order unless it relates to an adverse ruling concerning the petitioner's participation in the proceeding. Kay's petition for reconsideration, filed more than a year after the HDO was released, did not relate to Kay's participation in the proceeding. Accordingly, the Commission properly dismissed Kay's

March 29, 1996, Statement as unauthorized.¹

4. Similarly, there is no merit to Kay's alternative claim that the Commission should have considered his Statement under § 1.106(c)(1) of the Rules because the pleading presented "new facts." As shown above, § 1.106(a)(1) governs the filing of petitions for reconsideration of hearing designation orders. Furthermore, none of Kay's so-called "new


¹ Kay's request for reconsideration of the HDO was also abusive. As discussed above, the only matter that was pending before the Commission when Kay filed his March 29, 1996, Statement was the very narrow question of whether the HDO should be modified to delete 12 licenses from the proceeding. This narrow question was certified to the Commission by order of the Presiding Judge. The vastly broader question of whether the entire HDO should be reconsidered was not certified to or pending before the Commission. Kay simply filed his patently unauthorized plea for reconsideration of the HDO under the ruse of opposing the deletion of the 12 licenses in question. However, it is worth noting, as the Commission did in its Order, that Kay did not even dispute the Bureau's contention that the 12 licenses should be removed from the proceeding.

Kay's instant Petition also makes at least one baseless claim of note. In his recitation of events, Kay states that "on December 4, 1995, the Bureau filed a Motion for Summary Decision seeking to revoke, *without any opportunity for Kay to defend himself*, Kay's licenses and terminate the above-captioned proceeding based on Kay's alleged pre and post-designation misconduct." (emphasis added) Petition, at pp. 1-2. In flagrant conflict with this representation is the fact that Kay has heretofore *repeatedly* advanced his opposition to the Bureau's Motion for Summary Decision. See, e.g., Opposition to Bureau's Motion, filed December 18, 1995; Motion to Strike Bureau's Reply to Opposition, filed January 26, 1996; Bench Memorandum, filed January 31, 1996; Oral Argument, held January 31, 1996; and Reply to Bureau's Consolidated Response, filed February 15, 1996. See also Summary Decision of Administrative Law Judge Richard L. Sippel, FCC 96D-02 (released May 31, 1996).


facts" establishes a rational basis for rescinding the HDO.²

5. In sum, Kay has not demonstrated by reliable evidence or applicable law that the Commission erred in dismissing his March 29, 1996, Statement. Accordingly, Kay's Petition for Partial Reconsideration, filed May 24, 1996, should be denied.

Respectfully submitted,
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² Indeed, the arguments and information advanced by Kay in his instant Petition would appear to be moot given the fact that the Presiding Judge has issued a Summary Decision, FCC 96D-02 (released May 31, 1996), revoking Kay's licenses and ordering him to forfeit \$75,000 based on findings that Kay willfully violated § 308(b) of the Act and abused the Commission's hearing processes and is, as a consequence, basically unit to remain a Commission licensee.

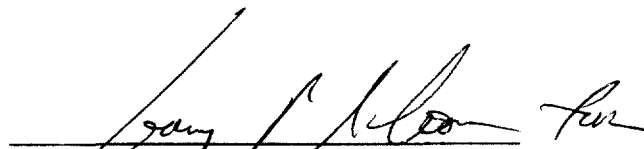
CERTIFICATE OF SERVICE

I, Shelia Foster, a secretary in the Enforcement Division, Wireless Telecommunications Bureau, certify that I have, on this 4th day of June 1996, sent by regular First Class United States mail, copies of the foregoing "Wireless Telecommunications Bureau's Opposition to Petition for Partial Reconsideration" to:

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